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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,265	10/07/2003	Mark A. Krull	TC2	8233

7590  
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11/02/2004

EXAMINER

HWANG, VICTOR KENNY

ART UNIT PAPER NUMBER

3764

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/682,265

Applicant(s)

KRULL, MARK A.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-6,9-11 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 2,3,7,8,12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Response to Amendment***

1. The amendment filed April 23, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the disclosure as originally filed does not support the limitation in claim 15 that indicia is provided on the gear. The disclosure describes indicia on the knob that is connected to the gear, but not on the gear itself.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the indicia provided on the gear (claim 15) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the

several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. Claims 15-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not support the limitation of indicia provided on the at least one selector rod or on the gear (see above). Drawing Fig. 75 appears to show indicia on the selector rods, but the specification does not support the claim language.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4-6, 9-11, 14 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over *Speyer* (US Pat. 3,825,253). *Speyer* discloses an exercise device having weighted ends with a handle for grasping between the weighted ends. The apparatus is used as a barbell, but the structure and its use is applicable to dumbbells as well. The device provides a weight supporting member 16 having opposite end portions 16b and an intermediate member 16a extending therebetween. A plurality of weight plates 10 are provided in alignment with the opposite end portions. First and second selector rods 19 are movably mounted within the intermediate member. The selector rods are selectively moved in opposite directions to engage respective weight plates at respective end portions of the weight supporting member. The moving step is performed by rotating at least one knob 22 on the weight supporting member. The device is used by rigidly interconnecting pairs of similarly situated weight plates at opposite ends of the weight supporting member. The knob 22 is a user operated member linked to the selector rod for selectively moving the selector rod into engagement with the weight plates.

***Allowable Subject Matter***

7. Claims 15-19 are allowable over the prior art.

8. Claims 2, 3, 7, 8, 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose the claimed method wherein the selector rods are constrained to move simultaneously (claims 2, 7, 12 and 18); wherein a handle extends between the end portions at a distance apart from the intermediate member (claims 3, 8, 13 and 19); or wherein at least one gear is rotatably mounted on the weight supporting member and linked to movement of the at least one selector rod (claims 15-19).

### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Pelletier et al.* (US Pat. 850,964), *Gogarty* (US Pat. 4,529,197), *Hettick* (US Pat. 4,529,198) and *Gogarty* (US Pat. 4,638,994) disclose dumbbells having features similar to the dumbbell provided for in the claimed methods.

*Chen* (US Pat. D422,654), *Chen* (US Pat. 6,149,558), *Chen* (US Pat. 6,186,928 B1), *Chen* (US Pat. 6,196,952 B1), *Hald et al.* (US Pat. 6,228,003 B1), *Dalebout et al.* (US Pat. 6,261,022 B1), *Krull* (US Pat. 6,416,446 B1), *Chen* (US Pat. 6,500,101 B1), *Chen et al.* (US Pat. Pub. 2003/0148862 A1), *Chen* (US Pat. 6,656,093 B2) and *Chen* (US Pat. Pub. 2004/0005969 A1) disclose dumbbells having features provided for in the dumbbell used in the

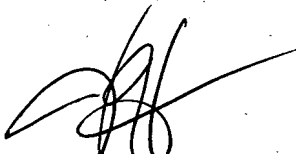
claimed methods, but are not considered prior art because their filing dates do not appear to precede the priority date of the instant application.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865 until Nov. 4, 2004. After Nov. 4, the new telephone number will be (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891 until Nov. 4, 2004. After Nov. 4, the new informal fax number will be the same as my telephone number, (571) 272-4976. The facsimile number for submitting all formal correspondence at this time is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on 703-308-2675.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
October 19, 2004



JUSTINE R. YU  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

10/19/04